

AMENDED IN ASSEMBLY MAY 8, 2007

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL

No. 985

Introduced by Assembly Member Saldana

February 22, 2007

An act to amend Sections 21168.6 and 25531 of the Public Resources Code, relating to the environment.

LEGISLATIVE COUNSEL’S DIGEST

AB 985, as amended, Saldana. Environment: judicial review.

The California Environmental Quality Act provides that in an action or proceeding against the Public Utilities Commission pursuant to the act the writ of mandate may only be filed with the Supreme Court of California. The Warren-Alquist State Energy Resources Conservation and Development Act provides that judicial review of decisions of the State Energy Resources Conservation and Development Commission on applications for certification of a power facility and related facility are subject to judicial review by the Supreme Court of California. *The California Constitution requires that decisions of the Supreme Court and courts of appeal that determine causes be in writing with reasons stated.*

This bill would, additionally, provide jurisdiction in these instances to a court of appeal. The bill would specify the venue in the Court of Appeal for a petition or judicial review. *The bill would deem such a petition to constitute a cause, and the Supreme Court and courts of appeal would be required to issue their decisions granting or denying the petition in writing with reasons stated.*

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 21168.6 of the Public Resources Code is amended to read:

21168.6. (a) ~~In any~~ *an* action or proceeding under Sections 21168 or 21168.5 against the Public Utilities Commission the writ of mandate shall lie only from the Supreme Court or a court of appeal to the commission. The venue of a petition for a writ of mandate filed in the Court of Appeal pursuant to this section shall be in the judicial district in which the petitioner resides. If the petitioner is a business, the venue shall be the judicial district in which the petitioner has its principle place of business in California.

(b) *A petition for a writ of mandate pursuant to this section shall constitute "cause" within the meaning of Section 14 of Article VI of the California Constitution, and the decision granting or denying the petition shall be in writing with reasons stated.*

SEC. 2. Section 25531 of the Public Resources Code is amended to read:

25531. (a) The decisions of the commission on an application for certification of a site and related facility are subject to judicial review by the Supreme Court of California or a court of appeal. The venue of a petition for a writ of mandate filed in the Court of Appeal shall be in the judicial district in which the petitioner resides. If the petitioner is a business, the venue shall be the judicial district in which the petitioner has its principle place of business in California.

(b) New or additional evidence shall not be introduced upon review and the cause shall be heard on the record of the commission as certified to by it. The review shall not be extended further than to determine whether the commission has regularly pursued its authority, including a determination of whether the order or decision under review violates any right of the petitioner under the United States Constitution or the California Constitution. The findings and conclusions of the commission on questions of fact are final and are not subject to review, except as provided in this article. These questions of fact shall include ultimate facts and the findings and conclusions of the commission. A report prepared by, or an approval of, the commission pursuant to Section 25510, 25514, 25516, or 25516.5, or subdivision (b) of Section 25520.5,

1 shall not constitute a decision of the commission subject to judicial
2 review.

3 (c) Subject to the right of judicial review of decisions of the
4 commission, a court in this state does not have jurisdiction to hear
5 or determine a case or controversy concerning a matter that was,
6 or could have been, determined in a proceeding before the
7 commission, or to stop or delay the construction or operation of a
8 thermal powerplant except to enforce compliance with the
9 provisions of a decision of the commission.

10 (d) Notwithstanding Section 1250.370 of the Code of Civil
11 Procedure:

12 (1) If the commission requires, pursuant to subdivision (a) of
13 Section 25528, as a condition of certification of any site and related
14 facility, that the applicant acquire development rights, that
15 requirement conclusively establishes the matters referred to in
16 Sections 1240.030 and 1240.220 of the Code of Civil Procedure
17 in any eminent domain proceeding brought by the applicant to
18 acquire the development rights.

19 (2) If the commission certifies a site and related facility, that
20 certification conclusively establishes the matters referred to in
21 Sections 1240.030 and 1240.220 of the Code of Civil Procedure
22 in an eminent domain proceeding brought to acquire the site and
23 related facility.

24 (e) A decision of the commission pursuant to Section 25516,
25 25522, or 25523 shall not be found to mandate a specific supply
26 plan for an utility as prohibited by Section 25323.

27 (f) *A petition for a writ of mandate pursuant to this section shall*
28 *constitute "cause" within the meaning of Section 14 of Article VI*
29 *of the California Constitution, and the decision granting or denying*
30 *the petition shall be in writing with reasons stated.*